

APPEAL NO. 040596
FILED MAY 6, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 21, 2003. The hearing officer determined that the _____, compensable injury of respondent 1 (claimant) includes an injury to the lumbar spine, thoracic spine, and cervical spine. Appellant (carrier) appealed this determination on sufficiency grounds. Respondent 2 (subclaimant) responds that the Appeals Panel should affirm the decision and order. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends there is no evidence to support the hearing officer's determination regarding extent of injury. Carrier contends that a medical history reciting a mechanism of injury is no evidence at all that an injury occurred as claimed. Claimant did not appear or testify at the hearing. The parties stipulated that claimant sustained a compensable injury. Medical reports in evidence state that claimant told medical providers he fell from scaffolding and then the scaffolding fell on his shoulder. Claimant said he had pain and aching muscles in his neck and mid-and low back. Medical records do not list any prior injuries or contributing factors other than the compensable injury. Dr. C performed a peer review for carrier and stated that claimant has a shoulder contusion and possible cervical strain.

The hearing officer could consider the hearsay statements from claimant contained in the medical records, along with the medical opinions of claimant's treating doctor, in determining the extent of claimant's injury. See *generally* Texas Workers' Compensation Commission Appeal No. 001180, decided July 6, 2000. We disagree that there was "no evidence" regarding the extent of the injury. The fact that a claimant does not or is unable to testify does not mean that extent of injury cannot be established by the medical evidence. Carrier cites several cases in support of its contention that there is no evidence regarding extent. However, those cases stand for the proposition that just because a medical report states that an injury happened in a certain way, the fact of the injury is not therefore established and the hearing officer may decide if the injury actually occurred. In the case before us, the fact that there was a compensable injury was not disputed.

Carrier cites Texas Workers' Compensation Commission Appeal No. 931136, decided January 27, 1994, in support of its contentions. In that case, the injured worker woke up after surgery with an aching tooth but did not remember any trauma to the tooth. Claimant's dentist "suspected" that the tooth was damaged during intubation for the surgery. The Appeals Panel determined that expert evidence was required to show

that intubation trauma caused injury to the tooth and that the evidence did not show this. That case is distinguishable because the injured worker in that case did not remember any trauma to the claimed body part and no one said they saw any trauma. There was no evidence at all of trauma to the tooth. In the case before us, there was medical evidence of trauma because claimant was aware of the fall and reported its effects to medical providers.

We have reviewed the complained-of determination regarding extent of injury and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **ST. PAUL MERCURY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge